No. 02-910

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 2002

WEST 41ST STREET REALTY LLC, EMM REALTY CORP., and TIMES SQUARE GARAGE, LTD.,

Petitioners,

v.

NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE STATE DEVELOPMENT CORPORATION, 42ND ST. DEVELOPMENT PROJECT, INC., 632 EIGHTH AVENUE ASSOCIATES, LLC, ROMACK REALTY CORP., and THREE O REALTY LLC,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

REPLY BRIEF

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REPLY BRIEF

The purported restatement of the questions presented in respondents' Brief in Opposition (Br. Opp. i) is not a genuine restatement of the questions presented by our petition (West 41st St. Pet. i). Instead, respondents have tried to substitute entirely different questions, which they obviously hope will be easier to answer than those we actually presented.

Respondents argue at great length that the record shows that there is some remaining blight in Site 8 South (Br. Opp. 2-3,

9-15). This simply begs the question presented by our petition, which is whether, even assuming that there is some residual blight, the respondents can take the property in order to let another private party develop it *when the owners want to develop their own property, and have been unconstitutionally prevented from doing so for many years by the respondents themselves* (West 41st St. Pet. i, 13-19).

Respondents assert that "[t]here is no evidence in the record that the Petitioners ever tried to develop Site 8 South on a private basis" (Br. Opp. 7). This is simply not so. As set forth in our petition, there is uncontradicted record evidence of the owners' efforts to develop their property (West 41st St. Pet. 6-7, 9-11), including an unsuccessful lawsuit seeking to remove respondents' threat of condemnation (*id.* at 6-7) and an offer by the owners of the majority of the square footage in Site 8 South to develop it without any public subsidies of any kind (*id.* at 7). Indeed, later in their brief respondents admit both the lawsuit and the offer, although they try to downplay their obvious significance (Br. Opp. 22-23).

Respondents also argue that the owners could not have developed the Site themselves (Br. Opp. 16-17, 22-23), but there is no record evidence to this effect, and respondents do not cite any (*see id.*). The only "evidence" adduced by respondents on this point is an earlier condemnation valuation involving a totally different and noncontiguous parcel (Br. Opp. 16-17, 1a-13a). The fact that respondents felt compelled to adduce this inapposite and extra-record "evidence" is powerful testimony to the baselessness of their argument. Respondents do not deny that their own environmental analysts reported that there is now a "thriving real estate market" in the area (West 41st St. Pet. 14, *citing* R. 406). Indeed, that is the obvious reason why the New York Times wants respondents to condemn the property for it.

Thus this case squarely presents the question whether development to eliminate "blight" can serve as the public purpose justifying condemnation when the owners themselves wish to develop their own property, and any residual "blight" is the result of the government's unconstitutional actions in preventing them from doing so over a period of 20 years. Respondents admit that it is constitutionally impermissible to take property from one owner in order to give it to another owner for its private purposes (Br. Opp. 24; *see* West 41st St. Pet. 15, and cases cited). This Court should grant certiorari in order to make clear that this bedrock constitutional principle cannot be evaded simply by intoning the word "blight" as a pretext for taking property from its owners who wish to develop it in order to give it to another private party to develop.

CONCLUSION

For the reasons set forth above and in the petition for certiorari, the Court should grant a writ of certiorari to review the order of the Court of Appeals of the State of New York, dated September 12, 2002, dismissing the petitioners' appeal

from the decision and order of the Supreme Court of the State of New York, Appellate Division, First Department, dated June 20, 2002.

Dated: New York, New York
January 20, 2003

Respectfully submitted,

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